

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF) No. C02-4621 BZ
CALIFORNIA, et al.,) and related case
) NO. C02-4623 BZ
Plaintiff(s),)
)
v.) **RULING ON SCOPE OF**
) **INJUNCTIVE RELIEF**
)
UNITED STATES DEPARTMENT)
OF TRANSPORTATION, et al.,)
)
Defendant(s).)
_____)
_____)
SIERRA CLUB, et al.,)
)
Plaintiff(s),)
)
v.)
)
UNITED STATES DEPARTMENT)
OF TRANSPORTATION, et al.,)
)
Defendant(s).)
)
)

At the April 16, 2003 hearing, the Town argued that any injunctive relief should be tailored to permit grading and fencing, which are initial phases of the airport project, beginning in June 2003. The Town filed a brief in

1 support of this contention and plaintiffs filed a brief in
2 opposition. The Town argues that grading and fencing at
3 the airport project site should go forward even if
4 defendants are required to conduct additional environmental
5 analysis because these initial phases of the project would
6 not result in increased jet service or in adverse
7 cumulative impacts. Town's Mem. of Points & Auth. in Supp.
8 of Tailored Injunctive Relief at 1:18-20. The Town further
9 contends that the land at the site has been disturbed "time
10 and time again" so the impacts to the land would be
11 "insignificant." Id. at 2:22-23. The Town's primary
12 concern seems to be that if I enjoin all work on the
13 project site, "[t]he Town will be unnecessarily delayed in
14 implementing the Project once the procedural NEPA issues
15 are fully resolved." Id. at 7:21-23.

16 The basis for injunctive relief "is irreparable injury
17 and inadequacy of legal remedies." Amoco Production Co. v.
18 Village of Gambell, 480 U.S. 531, 542 (1987). "In each
19 case, a court must balance the competing claims of injury
20 and must consider the effect on each party of the granting
21 or withholding of the requested relief." Id. Injunctive
22 relief is particularly appropriate in cases involving
23 environmental injury. Id. at 541.

24 In this case, I am not persuaded that a balancing of
25 the harms tips in favor of affording the Town the relief
26 that it seeks. See Save the Yaak, 840 F.2d at 722
27 (balancing the equities and enjoining the Forest Service
28 from further reconstruction and timber sales pending

1 further environmental review). For example, the Town's
2 concern about delay assumes that the project, in its
3 current or similar form, will survive further NEPA review.
4 In addition, Denyse Racine of the California Department of
5 Fish and Game testified that the grading will be in excess
6 of 16 acres. Declaration of Denyse Racine ¶ 5. If, for
7 example, the project does not go forward as planned, that
8 large area will have been needlessly disturbed.

9 The Town's argument that construction of the new fence
10 should go forward because the FAA requires new security
11 fencing and that a new fence will be erected, pursuant to
12 FAA regulations, even if the airport is not expanded, is
13 not supported by the record. In addition, at least some of
14 this grading and fencing appears to be the subject of an
15 environmental assessment and FONSI by the National Forest
16 Service. If the Town can make a future showing that the
17 FAA requires a new fence or that the Forest Service's
18 environmental decision is finalized and survives any
19 subsequent judicial review, it can seek a modification of
20 the injunction.

21
22 Dated: April 28, 2003

23
24 /s/ Bernard Zimmerman
Bernard Zimmerman
United States Magistrate Judge

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